HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos.20436 of 2003 & 513 of 2005

Date: 16-04-2007.

Between :

S.Satyavathi.

.....Petitioner

And

Chief Commissioner of Income Tax-II, Hyderabad & others.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos.20436 of 2003 & 513 of 2005

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

These two writ petitions raise same questions of law and fact and therefore, they are being disposed of by this common judgment.

Heard learned counsel for the parties and perused the record.

The grievance of the petitioner is that during search and seizure operations, the Revenue had seized articles of gold on 30th of June 1990. Thereafter, the assessments were made and only Rs.26,000/- at that point of time, was outstanding and that too by way of an interest. The petitioner moved applications for waiver, which were rejected. Thereafter, she moved application before the Central Board of Direct Taxes, which is pending. The main contention of learned counsel for petitioner is that the original liability was only Rs.26,000/-,

the gold that was seized weighed more than 400 grams and at any point of time, the value of gold was much more than the liability of the petitioner and in terms of Section 132B of the Income Tax Act, 1961 (for short 'the Act'), the respondents should have sold the gold and adjusted the liability and refunded the balance amount. He submits that although that was the responsibility of the Revenue, the petitioner and her husband made frequent appeals and representations to the respondents to return the gold after adjusting the liability, but this

was not done. We have seen from the record the applications made by the petitioner and her husband. One of the applications is dated 12.07.2003, in which, a specific request had been made to sell the gold and adjust the liability. The learned counsel for petitioner submits that on one hand the Department retained the gold for more than seventeen years and on the other hand the meter with regard to interest remained on and as such, in the counter affidavit now it has been stated that the liability as on today is Rs.1,58,000/-. Out of this, the interest component is Rs.1,13,286/-. We feel the course adopted by the Revenue is against common sense and by adopting such a course, they neither gained themselves nor the petitioner had any gains, on the other hand, the petitioner was put to harassment for a period of

seventeen years as the gold belonging to her was retained by the Department unnecessarily.

Section 132B of the Act as it read at the relevant period of time is;

> *"**132B. <u>Application of retained assets:</u>** -- (1) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely :--*
>
> *(i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates (including any penalty levied or interest payable in connection with such assessment or reassessment) and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.*
>
> *(ii) If the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied.*

(iii) *The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, Tax Recovery Officer under authorization from the Chief Commissioner or Commissioner under sub-section (5) of section 226 and the Assessing Officer or, as the case may be, Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule."*

In view of the mandate of this provision of law and in view of what has been stated by us hereinabove, we feel that the course adopted by the Department should have been to sell the gold items and adjust the liability as soon as it was possible, but the department cannot go on waiting indefinitely that too for a period of seventeen years, retaining the assets of assessees, not selling them, not adjusting the liability, but adding to the interest every year. The other contention raised by the petitioner was that the gold does not belong to the assessee, who was

her husband, but it was her *Stridhana* property. This plea cannot be accepted because we have seen from the record that many applications were made by the husband of the petitioner when he was alive and also by the petitioner herself, claiming the property to be the property of her husband and even asking the Department to sell the property and adjust against the liability.

For these reasons, we allow the writ petitions and direct that the gold seized from the petitioner be released on payment of an amount of Rs.35,378/-. Although the respondents have claimed an amount of Rs.9,335/- over and above the amount we have mentioned, but this amount pertains to the liability of 1989-1990, which was never subject matter of any notice given to the petitioner. In the circumstances of the case, we direct that no interest shall be charged, and on payment of the amount directed by us, the gold shall be released in favour of the petitioner. However, if the petitioner fails to pay the amount within two weeks from today, the Department shall sell the gold, adjust the liability and refund the balance amount to the petitioner.

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BILAL NAZKI, J

16th April 2007

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NOOTY RAMAMOHANA